

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2563 of 1994

with

SPECIAL CIVIL APPLICATION No 2726 of 1994

with

SPECIAL CIVIL APPLICATION No 2730 to 2731 of 1994

with

SPECIAL CIVIL APPLICATION No 2845 to 2856 of 1994

with

SPECIAL CIVIL APPLICATION No 1822 of 1994

with

SPECIAL CIVIL APPLICATION No 2717 to 2725 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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P S PARMAR

Versus

STATE OF GUJARAT

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Appearance:

MR RK MISHRA for Petitioner No. 1  
MR AD OZA G.P. for Respondent No. 1-3  
RULE NOT RECD BACK for Respondent No. 4  
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CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 04/09/2002

#### COMMON ORAL JUDGEMENT

1. In this group of petitions common questions of fact as well as of law are involved, hence they are heard together and now they are being disposed of by this common judgment.

2. In these petitions, respondent no.4 is a Supervisor in R.C. Mission school against whom no relief has been claimed by the petitioner. Since notice of rule issued on respondent no.4 is not yet received back, the petitioner seeks permission of this Court to delete him from the present petition. Such permission is granted and respondent no.4 therefore, stands deleted.

3. In this petition, the petitioner has challenged the order dated 18th January, 1994 issued by the District Education Officer, Kheda District at Nadiad which has been addressed to the Principal of R.C. Mission school. Vide the said order it has been intimated to the Principal of the concerned school that in his school the average strength of 40 students was not maintained in each class i.e. from standard I to standard IV and the strength of 25 students in standard V to standard VII and the bill for the month of November, 1993, December, 1993 and January, 1994 submitted by the school was being returned unpaid. He was further intimated that he should not send the bills for school having less than requisite number of students. By virtue of this order, the petitioner has not been paid salary for the month of November, 1993, December, 1993 and January, 1994.

3.1. It appears that R.C. Mission school is run by Christian Missionaries at different villages in the District of Kheda and the schools are duly recognised under the requisite provisions of law and till 1991 they had been receiving grant from the State Government and thereafter, these schools were placed under the scheme of

direct payment wherein by the submission of the bills, payment of salary of the staff employed by the school was accordingly made by the Education Department.

3.2. The petitioners have been working with the school since long. They have challenged this order on other grounds also but the main challenge is on the ground that Rule 115 of the Bombay Primary Education Rules, 1949 has been misinterpreted by respondent no.3 and that has resulted into great injustice to them. They have further contended that though they had worked for the period in question, they have not received salary for the said period which is not in consonance with the principles of service jurisprudence. He has further submitted that before discontinuing the payment of salary no opportunity of hearing was afforded to him and, therefore, respondent no.3 has violated the principles of natural justice. Lastly, he has submitted that considering the chart annexed to the petition at annexure-C it is very clear that when factually respondent no.3 is not correct, the impugned order should be quashed and set aside.

4. Though these petitions have been admitted on 22nd February, 1994 and ad-interim relief against the respondent has been operating since then no affidavit-in-reply has been filed to this petition.

5. To appreciate the submissions made by Mr.Mishra the relevant provisions with regard to determination of grant made in Rule 115 of Bombay Primary Education Rules, 1949 is the relevant rule which reads as under :-

"Rule 115.

Determination of grant : (1) Normally grant paid to an approved private school in any year is the grant for that year and shall be calculated on the basis of the total admissible expenditure of the preceding year.

Provided that no grant for approved schools shall be paid in any year unless the average attendance of the pupils is 25 or above in Standards I to IV, and 20 or above each in Standards V to VI, and 15 and above in Standards VII during preceding year.

(2) The maximum maintenance grant for an approved private schools shall be 66.2/3 per cent of the admissible expenditure on approved items of the preceding year or net deficit, whichever is less.

(3) For the purpose of sub-rule (2) the admissible expenditure includes ;-

(a) the actual expenditure on salaries of approved pay-scales laid down from time to time by the Department on the number of admissible teaching and non-teaching staff applicable to similar employees in the service of the State Government."

5.1. Proviso to sub-rule (1) of the Rule states that no grant shall be paid unless there is average attendance of 25 students or above it in standard I to IV and average attendance of 20 students or above it each in standards V to VI. If this proviso is carefully perused for standard I to IV the requirement is average attendance of 25 students or more. However, proviso does not say that for each class average attendance is required. If, immediately following sentence is perused closely, it shows 20 or above students in each standards of V to VI and 15 and above in standard VII in the preceding year. Thus it is very clear that "each" word is not used while prescribing the requisite strength for standards I to IV, meaning thereby that for standards I to IV the total average attendance should not be less than 25 students. In rest of the proviso it is specifically mentioned by using a word "each", meaning thereby that for standard V and VI, each standard should not have attendance less than 20 students and for standard VII it should not be less than 15 students. It therefore, appears respondent no.3 has not properly appreciated the proviso. The respondent had not cared to verify the attendance from this angle. If annexure-C to the petition is perused it shows the total strength of the students of class I to IV as 50. The very fact that there is nothing on record to show that the salary was denied on any previous occasion shows that all throughout, the requisite number of students have been studying in this school. In the circumstances there was no justification on the part of respondent no.3 to issue such order.

6. In the facts and in the circumstances of the case the impugned order at annexure-A dated 18th January, 1994 issued by respondent no.3 is required to be quashed and set aside. The respondents are directed to pay salary for the period comprising November, 1993, December, 1993 and January, 1994 to the petitioner forthwith. These petitions therefore, stands allowed. Rule is made absolute with no order as to costs in each of the petitions.

[AKSHAY H. MEHTA, J.]

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